

REMARKS

The applicants have carefully reviewed the Office action mailed on April 1, 2009. Claims 2-47 remain pending and at issue in this application. Of the claims at issue, claims 2, 20, and 34 are independent. In view of the following remarks, reconsideration of the application is respectfully requested.

Double Patenting

Claim 2 stands rejected on the grounds of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,513,161. Because this is an obviousness-type double patenting rejection, and because no claims are allowed, the applicants respectfully note that the double patenting rejection will be addressed once the final claim scope is determined.

The Rejections under 35 U.S.C. § 102

Claims 2-16, 18-44, and 46-47 were rejected as anticipated by Kiewit (US 4,697,209). It is respectfully submitted that claims 2-47 are allowable over this patent for at least the reasons set forth below.

Independent claims 2, 20, and 34 are generally directed to a system for determining an operating mode of a recording/playing device. In particular, claim 2 recites, among other things, a first monitor to detect a signal associated with a tuner, a second monitor to detect a signal associated with the recording/playing device, a third monitor to detect a program signal associated with a receiver operatively coupled to recording/playing device, and a fourth monitor to detect a recording signal associated with the recording/playing device. The recited system determines the operating mode based one or more of the first, second, third, and recording signals.

Kiewit fails to teach or suggest determining an operating mode of a recording/playing device based on a tuner signal, a signal from the recording/playing device, a receiver signal,

and/or a recording signal. In particular, Kiewit fails to teach or suggest the detection of a recording signal, and furthermore, fails to teach or suggest the comparison of a tuner signal, a signal from the recording/playing device, a program signal, and a detected recording signal to determine the operating mode of the recording/playing device.

Instead, Kiewit generally describes determining a “mode of viewing” by monitoring power line voltages of a television and a VCR. Accordingly, Kiewit fails to teach or suggest the detection of a recording signal as recited in the present claims. For example, Kiewit describes the detection of a “Mode 3” configuration, that occurs “when the television receiver is off and the VCR is on,” which “can be easily detected by monitoring power line voltage or voltages elsewhere in the television set and the video recorder.” [*Kiewit*, col. 5, ll. 55-57; col. 5, l. 67 – col. 6, l. 1]. Kiewit, however, does not detect a recording signal as recited in the present claims, thereby leaving the system described in Kiewit vulnerable to false readings, such as, for example, in the instance where a viewer simply forgets to turn off the VCR when turning off the TV set (i.e., the VCR is on and not recording, while the TV is turned off). Thus, while Kiewit applies a logical reasoning matrix (See FIG. 3) based on the measured power line voltage, Kiewit fails to teach or suggest the detection of a recording signal as recited in the present claims.

Furthermore, Kiewit describes a system for identifying programs such as television programs received from various sources, triggered by detection of the occurrence of predetermined events, such as, for example, a scene change in a video signal, and the extraction of a signature from the video signal in response to the predetermined event. [*Kiewit*, col. 6, ll. 21-33]. For instance, the system described by Kiewit determines the identity of the channel being viewed when the correlation between a receiver signal from a monitored receiver and a reference signal from a reference tuner exceeds a predetermined value. [*Kiewit*, col. 6, ll. 33-58]. Thus, Kiewit fails to teach or suggest the combined use of a

tuner signal, a signal from the recording/playing device, a program signal, and a detected recording signal to determine the operating mode of the recording/playing device, but rather relies upon the identification of predetermined events to affect signal extraction.

Therefore, due to the deficiencies in Kiewit, it follows that Kiewit cannot anticipate claims 2, 20, and 34, or any claims dependent thereon. In particular, because Kiewit fails to teach or suggest the detection of a recording signal, the use of a tuner signal, a signal from the recording/playing device, a program signal, and the detected recording signal to determine the operating mode of the recording/playing device, Kiewit cannot anticipate claims 2, 20, and 34. Accordingly, for at least the foregoing reasons, it is respectfully submitted that claims 2, 20, 34, and all claims dependent thereon are in condition for allowance.

Conclusion

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

The Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required during the pendency of this application to Deposit Account No. 50-2455.

Respectfully submitted,
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